

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Truth-in-Billing
and
Billing Format

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CC Docket No. 98-170

Petition for Temporary, Limited Waiver

Upper Peninsula Telephone Company ("Upper Peninsula"),¹ by counsel, hereby seeks temporary, limited waiver of the Truth-in-Billing ("TIB") requirements established by the Federal Communications Commission ("Commission" or "FCC") in its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.² Specifically, Upper Peninsula seeks temporary waiver of the requirements of Section 64.2401(b) regarding description of charges (the "TIB Description Requirement").³ Upper Peninsula seeks this waiver until April 1, 2000.

¹ Attachment A contains the declaration of Calvin Matthews, Vice President of Upper Peninsula. The declaration bears a facsimile signature. The original signed declaration will be filed upon receipt by counsel.

² In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72, released May 11, 1999, 64 Fed. Reg. 34488 (June 25, 1999); Errata, CC Docket No. 98-170, DA 99-2092, released October 6, 1999.

³ 47 C.F.R. § 64.2401(b) states that:

Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

Upper Peninsula is a member of the United States Telecom Association ("USTA"). As such, Upper Peninsula recognizes that a pending Petition filed by USTA seeks similar relief for USTA member companies.⁴ Moreover, Upper Peninsula recognizes that a pending Joint Petition filed by the National Exchange Carrier Association, Inc., the National Telephone Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, Inc. (collectively the "Associations") also seeks similar relief for their member companies. Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, Upper Peninsula requests a waiver of the TIB Description Requirement until April 1, 2000.

Until the waiver requested expires, Upper Peninsula will continue to work diligently on the software billing system changes necessary to comply with the TIB Description Requirement. Moreover, even after the waiver expires, the customer representatives of Upper Peninsula will continue to provide assistance to customers with questions concerning charges for particular services. Accordingly, Upper Peninsula respectfully submits that these actions will ensure that the underlying public interest objectives of the TIB Description Requirement will be advanced during the time that the requested waiver is in effect.

I. Background

Upper Peninsula provides exchange and exchange access services to approximately 7,044 lines in Michigan. Upper Peninsula relies upon its internal resources for billing system services (i.e., software and support). When this system requires modifications (e.g., in order to address

⁴ See Public Notice, DA 99-1616, released August 13, 1999.

regulatory or other issues), Upper Peninsula performs such modifications itself, including all necessary software modifications. In August, 1999, Upper Peninsula began addressing the FCC's various TIB requirements in order to ascertain what billing system changes would be required to ensure Upper Peninsula's compliance. During this time, Upper Peninsula has also been concentrating its efforts on Year 2000 issues. In August, 1999, Upper Peninsula, in conjunction with Marmen Computing, Inc., began the process of rewriting its entire billing system to ensure Upper Peninsula's compliance with the TIB requirements. Upper Peninsula included these activities as one part of its Year 2000 issue checklist associated with all of its computer-based systems. Although TIB compliance efforts were undertaken, Upper Peninsula has now determined that it will not be able to comply with the November 12, 1999 effective date of TIB Description Requirement⁵ with respect to the charges that Upper Peninsula currently aggregates on its bills under the classification of "Local Services."

Specifically, Upper Peninsula is in the process of developing the software necessary to provide a more itemized bill for local services, features, and functions. Currently, Upper Peninsula's billing system aggregates in its charges for "Local Services" various vertical services and features (e.g., custom calling features). Moreover, no description of these services and features is currently provided. Once the software upgrades are fully developed to comply with the TIB Description Requirement, the bills will then need to be tested in an effort to ensure compliance with the FCC's standard that service descriptions must contain "brief, clear, non-

⁵ See 64 Fed. Reg. 55163 (Oct. 12, 1999); see also Public Notice, DA 99-2030 (Sept. 30, 1999) and Public Notice, DA 99-1789 (Sept. 2, 1999).

misleading, plain language."⁶ Upper Peninsula notes, however, that even in the absence of this additional bill detail Upper Peninsula has had minimal customer complaints regarding its charges for other local services.

Based on the efforts it has taken to date, Upper Peninsula has concluded that it will be technically infeasible for Upper Peninsula to comply with the November 12, 1999 effective date of the TIB Description Requirement. Upper Peninsula anticipates, however, that it can complete the necessary software modifications and successfully test such software by April 1, 2000.

**II. Good Cause Exists for and the Public Interest
will be Served by a Grant of this Limited Waiver**

Based on these facts and circumstances, Upper Peninsula respectfully submits that good cause exists for a grant of this limited waiver, and that the public interest will be served by such action. As demonstrated herein, Upper Peninsula is making diligent efforts to comply with the TIB Description Requirement effective November 12, 1999. However, Upper Peninsula's compliance with this rule is not feasible by this date in light of the billing system software upgrades being developed and the need for successful testing of these upgrades. Moreover, the Commission's November 12, 1999 implementation date for the TIB Description Requirement is further complicated by efforts to address Year 2000 issues.⁷ Upper Peninsula anticipates that compliance with the TIB Description Requirement should be possible by April 1, 2000.

⁶ 47 C.F.R. § 64.2401(b).

⁷ Accord USTA Petition at 4, 9, and 11.

Accordingly, for the reasons stated, good cause exists for this waiver.⁸

Upper Peninsula also respectfully submits that the public interest would be served by a grant of this request. First, the Commission has recognized the need to balance the implementation of new regulatory directives which affect computerized systems with on-going Year 2000 activities.⁹ The software changes required by Upper Peninsula's billing system clearly fall into this Commission-defined category. The Commission's concerns regarding utilization of its Year 2000 Policy Statement to "'forestall' or 'roll back' disfavored regulations, or use this policy for purposes of competitive advantage"¹⁰ are not applicable here. Upper Peninsula is working toward TIB compliance and seeks only a limited extension of time that is otherwise consistent with the underlying objectives which justified the Commission-prescribed compliance date of certain other TIB rules. Accordingly, there is no basis to conclude that Upper Peninsula is attempting to "forestall" or "roll back" disfavored regulations. In addition, there is no "competitive advantage" associated with this request. A grant of this waiver does not affect a

⁸ "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ See In the Matter of Minimizing Regulatory and Information Technology Requirements That Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem, Year 2000 Network Stabilization Policy Statement, FCC 99-272, released October 4, 1999 ("Year 2000 Policy Statement") at para. 15.

¹⁰ Id. at para. 16.

competitor of Upper Peninsula; rather it allows an interim measure to be implemented that allows continuation of existing billing arrangements in a manner consistent with the status of the overall TIB compliance efforts by Upper Peninsula.

Second, the Commission has already determined that the April 1, 2000 date is appropriate for implementing other TIB rules.¹¹ Accordingly, the ability of Upper Peninsula to continue to work toward the April 1, 2000 implementation date for all TIB rules would ensure efficiency and continuity in the necessary enhancements of Upper Peninsula's billing system capability without incurring unnecessary expenditures or jeopardizing Year 2000 compliance issues.

Finally, the underlying goal of the TIB Description Requirement -- the ability of a customer to identify charges -- would not be frustrated by a grant of the requested waiver. As is done today, even after the requested waiver expires, Upper Peninsula will continue to provide customer service assistance regarding billing inquiries and questions. Accordingly, the goal of the TIB Description Requirement will be advanced. Waiver of the TIB Description Requirement as requested herein will merely maintain the status quo until such time as the billing system modifications are made and successfully tested.

Even assuming that harm to the public interest is present, that harm does not outweigh the public interest benefits arising from a grant of this request. As indicated, the concerns expressed by Upper Peninsula's consumers regarding the charges for Upper Peninsula's "Local Services" have been minimal. Moreover, Upper Peninsula anticipates that this experience will not change during the time that the requested waiver is in place.

¹¹ See n.5, supra.

III. Conclusion

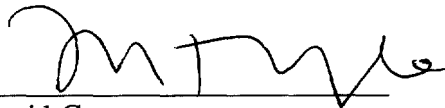
Because Upper Peninsula is technically incapable of complying with the TIB Description Requirement by November 12, 1999, a grant of this request until April 1, 2000 will ensure that Upper Peninsula can implement and successfully test the billing system software upgrades required to implement the TIB Description Requirement in an efficient manner, while avoiding unnecessary expense or raising additional Year 2000 compliance issues. At the same time, the consumer goals of these TIB rules will not be frustrated by a grant of this request. Rather, such goals will be furthered by Upper Peninsula as it continues to provide customer assistance and responsiveness when questions are received regarding charges for particular services.

Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, Upper Peninsula requests a waiver of the requirements of 47 C.F.R. §§ 64.2401(b) until April 1, 2000.

Respectfully submitted,

Upper Peninsula Telephone Company

By



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November 12, 1999

Thank-you

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U.P. TELEPHONE

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**Declaration of Calvin Matthews
Vice President of
Upper Peninsula Telephone Company**

I, Calvin Matthews, Vice President of Upper Peninsula Telephone Company ("Upper Peninsula"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding Upper Peninsula is true and accurate to the best of my knowledge, information, and belief.

Date November 11, 1999



Calvin Matthews
Vice President

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Temporary, Limited Waiver" of Upper Peninsula Telephone Company was served on this 12th day of November, 1999 by hand delivery to the following parties:


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